

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

DANIEL JOSEF MCDERMOTT,

Plaintiff,

v.

RON HAYES, *et al.*,

Defendants.

Case No. 3:21-cv-00274-SLG-SAO

**ORDER RE SCREENING ORDER AND REPORT AND RECOMMENDATION
REGARDING COMPLAINT**

Before the Court at Docket 11-1 is Plaintiff Daniel Josef McDermott's ("Plaintiff") Prisoner's First Amended Complaint Under the Civil Rights Act, 42 U.S.C. § 1983. This matter was referred to the Honorable Magistrate Judge Scott A. Oravec. At Docket 15 Judge Oravec issued a *Screening Order and Report and Recommendation Regarding Complaint* in which he recommended that this action be dismissed with prejudice if Plaintiff does not file either a Second Amended Complaint or Notice of Voluntary Dismissal on the Court's form by July 25, 2022, pursuant to 28 U.S.C. § 1915 (a)(2)(B) and, that a dismissal under these circumstances should be a strike as required by 28 U.S.C. § 1915(g) and *Lomax v. Ortiz-Marquez, et al.* 590 U.S. ___, 140 S.Ct. 172 (2020).¹

¹ 28 U.S.C. § 1915(g) prohibits a prisoner who has filed more than three actions or appeals in any federal court in the United States that are dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, from bringing any other actions without prepayment of fees unless the prisoner can demonstrate that he or she is in "immediate danger of serious

No objections to the *Screening Order and Report and Recommendation Regarding Complaint* were filed and Plaintiff has not filed a Second Amended Complaint or a Notice of Voluntary Dismissal.

The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1). That statute provides that a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”² A court is to “make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.”³ However, § 636(b)(1) does not “require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”⁴

The Court has reviewed the *Screening Order and Report and Recommendation Regarding Complaint* and agrees with its analysis. Accordingly, the Court adopts the Report and Recommendation Regarding Complaint in its entirety, and IT IS ORDERED that this action is DISMISSED WITH PREJUDICE pursuant to 28 U.S.C. § 28 U.S.C. § 1915(e)(2)(B). This dismissal shall be counted

physical injury.”

² 28 U.S.C. § 636(b)(1).

³ *Id.*

⁴ *Thomas v. Arn*, 474 U.S. 140, 150 (1985); see also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

as a STRIKE as required by 28 U.S.C. 1915(g) and *Lomax v. Ortiz-Marquez, et al.*
590 U.S. ___, 140 S.Ct. 172 (2020). A final judgment shall be entered accordingly.

DATED this 31st day of August, 2022, at Anchorage, Alaska.

/s/ Sharon L. Gleason

UNITED STATES DISTRICT JUDGE